

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 383 of 2007**

Smt. Janki Bai, W/o Late Mohan Sahu, Aged about 25 years, R/o Navagaon (Khishora), Tahsil and P.S. - Magarlod, District Dhamtari (C.G.)

----Appellant/defendant No. 1

Versus

1. Smt. Urmila Bai, W/o Shri Salik Ram Sahu, R/o-Village Bamnih, Tahsil - Chhura, Distt Raipur (C.G.)

2. Smt. Fulkunwar, W/o Shri Chintaram Sahu, Aged about 68 years, R/o - Village Teka, Tahsil Rajim, District - Raipur (C.G.)

3. State of C.G. Through : Collector Raipur, District - Raipur (C.G.)

----Respondents/plaintiffs

For Appellant : Mr. Vivek Kumar Tripathi, Adv.
For Respondent No. 4 : Mr. Sanjeev Agrawal, PL

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/12/2019

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by defendant No. 1 under Section 100 of the Code of Civil Procedure, 1908 questioning the impugned judgment & decree dated 03.03.2007 passed in Civil Appeal No. 2-A/2007 by the Additional District Judge, Gariaband affirming the judgment & decree of the Civil Judge, Class-I, Gariaband dated 27-11-2006 passed in Civil Suit No. 32-A/2003, decreeing the suit.

2. Learned counsel appearing for the appellant/defendant No. 1 would submit that both the courts below have concurrently erred in holding that the suit land fell in the share of plaintiff No.1 and defendant No. 1 pursuant to the partition made by Tahsildar vide its order dated 13.01.1997, which is perverse to the record and, therefore, the second appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

3. It is the case of the plaintiffs that in the proceedings initiated under Section 178 of the Land Revenue Code, Tahsildar passed an order of partition on 13.01.1997, by which the suit land was allotted in share of plaintiff No. 1 and defendant No. 1, therefore, he is entitled for declaration of title, partition and possession, which the trial Court found favour with holding that the suit land fell in the share of plaintiff No.1 & defendant No. 1 on partition held on 13.01.1997 and negatived the earlier partition dated 08.04.1992 set up by defendant No. 1, which has been affirmed by the first appellate court by its impugned judgment & decree, on an appeal being preferred by defendant No. 1.

4. Admittedly, plaintiff No. 1 is the daughter of Chintaram with his second wife Fulkunwar whereas defendant No. 1 is daughter in law of Chintaram being the wife of Mohan. Both the courts below have held that pursuant to the partition made on 13.01.1997, suit property fell in the share of plaintiff No.1 and defendant No. 1 and the earlier partition

dated 08.04.1992 set up by defendant No. 1 is not found established and decreed the suit accordingly and held that plaintiff is entitled for 1/2 share in the suit property and this finding was affirmed by the first appellate Court, on an appeal preferred by defendant No. 1. This finding of fact arrived at by the two courts below is based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

5. Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

